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FIRST GENERAL COUNSEL'S REPORT

MUR 6616

DATE COMPLAINT FILED: July 27, 2012

DATE OF NOTIFICATION: Aug. 2/Oct. 11, 2012

LAST RESPONSE RECEIVED: Sept. 26, 2012

DATE ACTIVATED: Nov. 1, 2012

EXPIRATION OF SOL:

(earliest) May 31, 2017

(latest) May 31, 2017

RESPONDENTS:

Steelman for U.S. Senate and Jeff Layman,
in his official capacity as treasurer
Now or Never PAC and James C. Thomas III,
in his official capacity as treasurer
Steven D. Tilley
Friends of Tilley
Missouri Leadership Committee

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(4)(A)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)
2 U.S.C. § 441i(e)(1)(A)
11 C.F.R. § 100.5
11 C.F.R. § 300.2(n)
11 C.F.R. § 300.60
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that Steelman for U.S. Senate ("Steelman Committee") – through its agent and campaign chairman Steven Tilley – violated the soft money

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1 ban of the Federal Election Campaign Act of 1971, as amended (the "Act"). According to the
2 Complaint, Tilley directed funds from a non-federal committee he controlled, Friends of Tilley,
3 through another non-federal committee he allegedly controlled, the Missouri Leadership
4 Committee ("Missouri Leadership"), to make a \$25,000 contribution to an FEC-registered
5 independent expenditure-only committee, Now or Never PAC, that supported Steelman. The
6 Complaint further alleges that Missouri Leadership triggered political committee status and
7 should have registered and reported as a political committee with the Commission.

8 The Steelman Committee, Tilley, Friends of Tilley, Missouri Leadership, and Now or
9 Never PAC deny the allegations, asserting that the Complaint did not provide any credible
10 evidence that violations occurred in connection with the contribution from Missouri Leadership
11 to Now or Never PAC. Missouri Leadership also denies that its contribution triggered the
12 registration and reporting requirements for a political committee. Based on the Complaint,
13 Responses, and the available information we have reviewed, there is insufficient basis to
14 conclude that there is reason to believe that Respondents violated the Act in connection with
15 Missouri Leadership's contribution. Accordingly, we recommend that the Commission find no
16 reason to believe that the respondents violated 2 U.S.C. § 441i(e). We also recommend that the
17 Commission find no reason to believe that Missouri Leadership Committee violated 2 U.S.C.
18 §§ 433 or 434.

19 II. FACTS

20 The Steelman Committee is the principal federal campaign committee of former U.S.
21 Senate candidate Sarah Steelman, who was a candidate in the 2012 primary election for the
22 Senate from Missouri.¹ Steve Tilley, the Missouri House Speaker, became Steelman's

¹ See Steelman for U.S. Senate, Statement of Organization (Dec. 1, 2010).

1 Campaign chairman in February 2012.² Friends of Tilley is a non-federal candidate committee,
2 registered with the Missouri Ethics Commission, whose principal purpose is the support and
3 election of Tilley to state office in Missouri.³ Missouri Leadership is a Missouri-based
4 non-federal political action committee, also registered with the Missouri Ethics Commission,
5 whose stated principal purpose is the support and election of state and local candidates in
6 Missouri.⁴ Now or Never PAC is an independent expenditure-only committee registered with
7 the Commission.⁵

8 Between July 2010 and December 2011, Friends of Tilley and Missouri Leadership made
9 several contributions to each other.⁶ In July 2010, Friends of Tilley made a \$100,000
10 contribution to Missouri Leadership.⁷ Then, in December 2010 and June 2011, Missouri
11 Leadership made two contributions of \$100,000 each to Friends of Tilley to support Tilley's race
12 for Missouri Lieutenant Governor.⁸ And in December 2011, after Tilley ended his candidacy for

² See Friends of Tilley Amended Resp. at 8 (Sep. 26, 2012); Jake Wagman, *House Speaker Tilley Backs Steelman for Senate, Will Chair Her Campaign*, ST. LOUIS POST-DISPATCH Blog, Feb. 29, 2012 2:30 pm, available at http://www.stltoday.com/news/local/govt-and-politics/political-fix/house-speaker-tilley-backs-steelman-for-senate-will-chair-her/article_bbaaacc4-6310-11e1-9ada-0019bb30f31a.html.

³ See Friends of Tilley Resp., John R. Crouch Amended Decl. ¶ 3; http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CF11_CommInfo.aspx?MECID=C031160&Type=I.

⁴ See Missouri Leadership Resp., Tom R. Burcham, III Decl. ¶ 4 (Sep. 13, 2012); http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CF11_CommInfo.aspx?MECID=C061401&Type=I.

⁵ See Now or Never PAC, Statement of Organization (Mar. 19, 2012).

⁶ See <http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CampaignFinance.aspx>.

⁷ See Crouch Amended Decl. ¶ 6.

⁸ See Burcham Decl. ¶¶ 8-9.

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1 Lieutenant Governor, Friends of Tilley returned \$134,000 of that \$200,000 to Missouri
2 Leadership.⁹

3 On May 29, 2012, approximately six months after Missouri Leadership received its
4 repayment from Friends of Tilley, Missouri Leadership made a \$25,000 contribution to Now or
5 Never PAC.¹⁰ Now or Never PAC made independent expenditures totaling \$693,840 in support
6 of Steelman and \$678,840 in opposition to John Brunner, one of Steelman's opponents.¹¹

7 The Complaint alleges that the Steelman Committee – through its agent and campaign
8 chairman Tilley – “financed, directed, or controlled non-federal funds” in violation of the Act
9 “by furnishing \$25,000” to Now or Never PAC through Missouri Leadership, a state committee
10 allegedly financed by Friends of Tilley.¹² In support, the Complaint cites (1) Tilley's role in
11 2012 as chairman of the Steelman campaign; (2) reports that Tilley “control[s] . . . the funds of
12 Missouri Leadership;”¹³ (3) the “orchestrated” contributions between Friends of Tilley and
13 Missouri Leadership from July 2010 to December 2011, providing “significant evidence of the
14 direction and control” Tilley exercised over Missouri Leadership; and (4) reports that Now or

⁹ See Crouch Amended Decl. ¶ 9; Burcham Decl. ¶ 10. The \$134,000 represented 67% of the two \$100,000 contributions Friends of Tilley previously received from Missouri Leadership. According to Friends of Tilley, that amount was calculated based on its policy for the return of contributions after Tilley ended his candidacy. That policy provided that any donor could request a return of 67% of the amount of their contributions to Tilley's statewide campaign. Friends of Tilley represents and Missouri Leadership confirms that the refund to Missouri Leadership was made pursuant to Missouri Leadership's request.

¹⁰ Burcham Decl. ¶ 11.

¹¹ See Now or Never PAC Oct. 2012 Quarterly Report.

¹² Compl. at 2.

¹³ See Compl. at 3 (citing *Greasing the Wheels: The Steve Tilley Money Machine*, June 15, 2009 1:51 pm, <http://www.firedupmissouri.com/content/greasing-wheels-steve-tilley-money-trail-0>).

Never PAC was established to support Steelman's race for Senate and had announced plans to spend \$500,000 for the 2012 Missouri primary election.¹⁴

III. ANALYSIS

A. The Allegation that Tilley Funnelled Non-Federal Funds to Now or Never PAC

The Act and Commission regulations prohibit federal candidates, federal officeholders, agents acting on their behalf, and entities that are directly or indirectly established, financed, maintained, controlled by, or acting on behalf of federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹⁵ Commission regulations define "to direct" as "to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value."¹⁶

¹⁴ Compl. at 2 (citing Eli Yokley, POLITICMO, *Democratic Super PAC, Steelman Use Similar Messages in Latest Ads*, July 18, 2012, <http://politicmo.com/2012/07/18/brunner-becoming-target-of-super-pac-spending>).

¹⁵ 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61. Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a federal candidate or individual holding federal office." 11 C.F.R. § 300.60(c). The Commission has defined an "agent" of a federal candidate or officeholder to be "any person who has actual authority, either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with any election." *Id.* § 300.2(b)(3).

¹⁶ *Id.* § 300.2(n).

1 The Act limits contributions to nonconnected political committees to \$5,000 in any
2 calendar year.¹⁷ The Act also prohibits corporations and labor organizations from making any
3 contribution in connection with any federal election.¹⁸

4 Following the decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010), and
5 *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), the Commission concluded in Advisory
6 Op. 2010-11 (Commonsense Ten) that individuals, political committees, corporations, and labor
7 organizations may make unlimited contributions to independent expenditure-only political
8 committees and that such committees may solicit unlimited contributions from such entities.
9 Thus, committees such as Now or Never PAC that have registered with the Commission may
10 accept unlimited contributions from individuals, political committees, corporations, and labor
11 organizations.

12 In Advisory Op. 2011-12 (Majority PAC), the Commission clarified that the solicitation
13 restrictions under section 441i(e) remain applicable to contributions solicited by federal
14 candidates, officeholders and other covered persons after *Citizens United* and *SpeechNow.org*.
15 The Commission determined that such persons may solicit for independent expenditure-only
16 political committees only contributions of \$5,000 or less, and not from prohibited sources.¹⁹
17 Thus, if Tilley is an agent of Steelman, a candidate for federal office, he would be prohibited
18 from soliciting, directing, or transferring non-federal funds, such as the \$25,000 contribution to
19 Now or Never PAC.

¹⁷ 2 U.S.C. § 441a(a)(1)(C).

¹⁸ *Id.* § 441b(a).

¹⁹ Section 441i was upheld by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93, 181-184 (2003), and was not disturbed by either *Citizens United* or *SpeechNow*. Advisory Op. 2011-12 at 4. *But see* Advisory Op. 2012-34 (Freedom PAC) (concluding that a principal campaign committee of a federal candidate may use campaign funds to make a contribution of \$10,000 or more to an independent expenditure-only political committee).

1 The Steelman Committee specifically denies that it exercised any control over
2 non-federal funds received by Now or Never PAC from Missouri Leadership.²⁰ Now or Never
3 PAC contends it has no "knowledge as to whether the 'Steelman Campaign' . . . through its agent
4 and campaign chairman, financed, directed or controlled non-federal funds" and that Now or
5 Never PAC is "intentionally not in communication with Steelman for US Senate."²¹ Friends of
6 Tilley, Missouri Leadership, and Tilley, each represented by the same counsel, argue that the
7 factors cited in the Complaint concerning Tilley's multiple roles and the various financial
8 transactions do not reflect that Tilley exercised direction or control over the \$25,000 contribution
9 from Missouri Leadership to Now or Never PAC.²²

10 Tilley, as chairman of the Steelman Campaign, may have been an agent of the Steelman
11 Committee under Section 441i(e)(1). But the evidence of Tilley's control over Missouri
12 Leadership is mere conjecture. That Friends of Tilley and Missouri Leadership made
13 contributions to each other does not mean that Tilley exercised control over Missouri Leadership
14 or solicited the contribution. Moreover, we are not aware of any press articles after 2009
15 regarding Tilley and Missouri Leadership. Nor are we aware of any publicly available source
16 providing a credible, factual basis from which to derive a contrary inference.²³ It may be true

²⁰ Steelman Committee Resp. at 1 (Aug. 10, 2012).

²¹ Now or Never PAC Resp. at 1-2 (Aug. 16, 2012).

²² Friends of Tilley Resp. at 8-9; Missouri Leadership Resp. at 16-19. The responses also requested that the Commission "issue an Order" requiring the Complainant to reimburse the respondents the attorney's fees they incurred in connection with preparing the responses to the complaint. Friends of Tilley Resp. at 2; Missouri Leadership Resp. at 2. We make no recommendation concerning that request, as the Act does not provide the Commission with authority to order any such relief.

²³ The internet piece cited in the Complaint asserts that Tilley used committees like Missouri Leadership to distribute contributions to other lawmakers who might support his Missouri House leadership ambitions. *See Greasing the Wheels, supra* ("As Fired Up! has noted in the past, Tilley utilizes an array of committees for raising and distributing funds," including Friends of Tilley and Missouri Leadership). But that article provides no factual support or source for its conclusion, other than the fact that contributions passed among various committees. Other press articles discuss Tilley's fundraising for Missouri Leadership, but likewise fail to cite any factual basis that

1 that Missouri Leadership's \$25,000 contribution to Now or Never PAC was a contribution to an
2 independent expenditure-only political committee that supports Steelman, whose campaign was
3 chaired by Tilley, and that Tilley's own state committee previously exchanged contributions with
4 Missouri Leadership. Without more, however, we conclude that these general facts do not give
5 rise to reason to believe that Tilley, as an agent of Steelman, directed, financed, or controlled
6 Missouri Leadership funds, or directed Missouri Leadership to make a contribution to Now or
7 Never PAC, or directed the subsequent independent expenditures of Now or Never PAC.²⁴
8 Accordingly, we recommend that the Commission find no reason to believe that Respondents
9 violated 2 U.S.C. § 441i(e).

10 **B. The Allegation that Missouri Leadership Failed to Register and Report as a**
11 **Political Committee**

12 The Complaint alleges that Missouri Leadership's single \$25,000 contribution to Now or
13 Never PAC triggers political committee status under Commission regulations at 11 C.F.R.
14 § 100.5, which implements the statutory definition of political committee at 2 U.S.C.
15

would support a conclusion that Tilley directs or controls Missouri Leadership's contribution activities. *See, e.g.,* Tony Messenger, *Developer's PACs Funnel Cash*, ST. LOUIS POST-DISPATCH (Apr. 26, 2009) (stating that Tilley raises money for Missouri Leadership), available at http://stltoday.com/news/local/metro/developer-s-pacs-funnel-cash-ten-committees-his-firm-funds/article_4bb355e3-685e-5713-bcf8-2fb8371b85f4.html; David A. Lieb, *Mo. Lawmaker Says FBI Asking About Sales Tax Bill*, THE SEATTLE TIMES (Dec. 1, 2009) (stating that Missouri Leadership's treasurer, a friend of Tilley, has made donations to Tilley's campaign committee and that Tilley has raised money for and made donations to Missouri Leadership), available at http://seattletimes.com/html/business/technology/2010395506_apusmissourisalestaxesfbi.html; Editorial: *Trail of Dirty Money Continues to Pull Missouri Into the Mud*, ST. LOUIS POST-DISPATCH (July 19, 2012) (characterizing Missouri Leadership as "a Missouri political action committee that for years has been a conduit for Missouri House Speaker Steve Tilley," but providing no explanation or factual background for that characterization), available at http://www.stltoday.com/news/opinion/columns/the-platform/editorial-trail-of-dirty-money-continues-to-pull-missouri-into/article_a553acac-a696-5cfe-ad14-089b2f9f82e6.html.

²⁴ See Burcham Decl. ¶ 11 ("[I]n no way was [the \$25,000 contribution to Now or Never PAC] coordinated, requested, suggested, or facilitated by any candidate for federal or non-federal office, any political party, or agent thereof.").

1 § 431(4)(A).²⁵ The Act and Commission regulations define a "political committee" as "any
2 committee, club, association, or other group of persons which receives contributions aggregating
3 in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of
4 \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*,
5 424 U.S. 1, 79 (1976), the Supreme Court concluded that the term "political committee" "need
6 only encompass organizations that are under the control of a candidate or the major purpose of
7 which is the nomination or election of a candidate."²⁶

8 Even accepting for the sake of argument the Complaint's allegation that Missouri
9 Leadership satisfied the statutory threshold for political committee status, Missouri Leadership
10 was not a political committee. Missouri Leadership does not have the required major purpose of
11 federal campaign activity, *i.e.*, the nomination or election of federal candidates.²⁷ Rather, "its
12 principal purpose [is] the support and election of *state and local candidates* across the State of
13 Missouri."²⁸

14 Disclosure reports filed with the Missouri Ethics Commission confirm this conclusion.
15 Missouri Leadership reported that it made \$109,000 in disbursements through 2012.²⁹ Its

²⁵ The terms "contribution" and "expenditure" include any gift, payment, distribution, advance, or deposit of money or anything of value "for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i), 431(9)(A)(i); 11 C.F.R. §§ 100.52, 100.111.

²⁶ See also Political Committee Status, 72 Fed. Reg. 5596 (Feb. 7, 2007) (adopting a policy of determining political committee status on a case-by-case basis).

²⁷ *Id.*

²⁸ Burcham Decl. ¶ 4 (emphasis added).

²⁹ See Missouri Leadership 2012 Reports, http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CF11_CommInfo.aspx?MECID=C061401&Type=1. Missouri Leadership reported that it began 2012 with \$135,000 in cash on hand. During 2012, Missouri Leadership reported making contributions totaling \$42,000 to Missouri state and local candidate committees; \$11,400 to the Missouri House Republican Campaign Committee; and \$600 to the St. Francois County Republican Central Committee. *Id.* It also made disbursements for accounting and legal fees and taxes. *Id.* This analysis does not include a \$40,000 loan that Missouri Leadership made to a state candidate, which was repaid later in 2012. *Id.*

1 \$25,000 contribution to Now or Never PAC was its only federal campaign activity.³⁰ This falls
2 short of the required showing to meet the major purpose test.

3 Accordingly, we recommend that the Commission find no reason to believe that Missouri
4 Leadership Committee violated 2 U.S.C. §§ 433 or 434.

5 **IV. RECOMMENDATIONS**

1. Find no reason to believe that Steelman for U.S. Senate and Jeff Layman in his official capacity as treasurer; Now or Never PAC and James C. Thomas III in his official capacity as treasurer; Steven Tilley; Friends of Tilley; and Missouri Leadership Committee violated 2 U.S.C. § 441i(e) in connection with the allegations in this matter.
2. Find no reason to believe that Missouri Leadership Committee violated 2 U.S.C. §§ 433 or 434 in connection with the allegations in this matter.
3. Approve the attached Factual and Legal Analyses.
4. Approve the appropriate letters.

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³⁰

Id.

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1/17/13
Date

Anthony Herman
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BY:


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